Supreme Court, U.S.
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No.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

THADDEUS A. PUDLO,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

Petition for Writ of Certiorari to the
Appellate Court of Illinois,
First District, Fourth Division

PETITION FOR WRIT OF CERTIORARI

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64 pp

(1a) QUESTIONS PRESENTED

1. Considering that this Court has granted certiorari to determine whether forfeiture and criminal prosecution predicated on the same conduct is prohibited by the double jeopardy clause (*cert. granted* Jan. 12, 1996 in *United States v. Ursery*, No. 95-345; *United States v. $405,089.23*, No. 95-346; and *Degen v. United States*, No. 95-173), should certiorari be granted in the present case to afford this Court an opportunity to address yet another form of official abuse of prosecutorial power to doubly penalize the same conduct - here, prosecution and punishment both for State statutory violation and City ordinance violation, for the same conduct respecting litter on one's property?

A. Does the constitutional guarantee against double jeopardy prohibit the prosecution and punishment of a citizen by the State under a Litter Control Statute, for the same conduct for which he was convicted and fined for violations of the Chicago Municipal Code - where a City Building Inspector testified at the State trial, that the property conditions about which he testified in the State prosecution, were the same as those to which he testified at the municipal prosecution?

B. Does the State Appellate Court majority irrationally misapply this Court's precedents - the "same elements" standard, as formulated in Blockburger v. United States, 284 U.S. 299, 76 L.Ed. 306, reaffirmed and refined in Grady v. Corbin, 495 U.S. 508, 109 L.Ed.2d 548

and United States v. Dixon, 509 U.S. , 125 L.Ed.2d 556, to include "same conduct" - in determining that "allowing litter to accumulate" is not the same as "failing to remove" litter for purposes of the "same elements" test?

(1b) PARTIES INVOLVED (per Rule 21.1(b)]

Petitioner, Thaddeus A. Pudlo, was the defendant in the Circuit Court of Cook County, Illinois, appellant in the Appellate Court of Illinois, First Judicial District, Fourth Division, and petitioner in the Supreme Court of Illinois.

Respondent, People of the State of Illinois, was the plaintiff in the Circuit Court, appellee in the Appellate Court of Illinois, and respondent in the Supreme Court of Illinois.

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Certiorari should be allowed to safeguard that aspect of the constitutional guarantee against double jeopardy, which precludes multiple punishment for the same conduct.

1. Considering that the Court has granted certiorari to determine

whether forfeiture and criminal prosecution predicated on the same conduct is prohibited by the double jeopardy clause (*cert. granted* Jan. 12, 1996 in *United States v. Ursery*, No. 95-345; *United States v. $405,089.23*, No. 95-346; and *Degen v. United States*, No. 95-173), granting certiorari in the present case will afford this Court an opportunity to address yet another form of official abuse of prosecutorial power to doubly penalize the same conduct.

A. The constitutional guarantee against double jeopardy prohibits the prosecution and punishment of a citizen by the State under a Litter Control Statute, for the same

conduct for which he was convicted and fined for violations of the Chicago Municipal Code - where a City Building Inspector testified at the State trial, that the property conditions about which he testified in the State prosecution, were the same as those to which he testified at the municipal prosecution.

B. The Appellate Court Court majority irrationally misapplies this Court's precedents - the "same elements" standard, as formulated in Blockburger v. United States, 284 U.S. 299, 76 L.Ed. 306, as reaffirmed and refined in Grady v. Corbin, 495 U.S. 508, 109 L.Ed.2d 548 and United States v. Dixon, 509 U.S. , 125 L.Ed.2d 556,

to include "same conduct" - in determining that "allowing litter to accumulate" is not the same as "failing to remove" litter for purposes of the "same elements" test.

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(1d) Judgment Below

The Opinion of the Appellate Court of Illinois, First Judicial District, Fourth Division, No. 1-93-1891, is attached as Appendix A to this Petition. It is reported at People v. Pudlo, 272 Ill.App.3d 1002, 651 N.E.2d 676 (1 Dist. 1995).

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

THADDEUS A. PUDLO,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

Petition for Writ of Certiorari to the Appellate Court of Illinois, First District, Fourth Division

Petitioner, Thaddeus A. Pudlo (hereafter, defendant), prays that a Writ of Certiorari issue to review the judgment of the Appellate Court of Illinois, First District, Fourth Division, affirming his conviction and sentence for violating the Litter Control Act. [Presiding Justice Hoffman dissented. App. A, pp. App. 11-21.]

Judgment and Opinion Below

The Opinion of [a majority of] the Appellate Court of Illinois, First District, Fourth Division, affirming the conviction and sentence, is set out as App. A, pp. App. 1-11. Presiding Justice Hoffman dissented, App. A, pp. App. 11-21. The Opinion is reported at People v. Pudlo, 272 Ill.App.3d 1002, 651 N.E.2d 676 (1 Dist. 1995).

Jurisdictional Statement

On June 1, 1995, the Appellate Court of Illinois, First District, Fourth Division, filed its Opinion. (App. A; App. 1) Petition for Rehearing was denied on July 19, 1995. (App. B, App. 22) Petition for Leave to Appeal to the Supreme Court of Illinois, No. 79622, was denied on December 6, 1995.

(App. C; App. 24)

This Petition for Certiorari is timely filed within 90 days thereafter.

Jurisdiction is invoked under 28 U.S.C. § 1257(a) and Rules 10.1, 12.1, and 13.1 of this Court.

Constitutional Provision

The 5th Amendment to the U.S. Constitution provides, in part:

> "nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb . . ."

The 14th Amendment to the U.S. Constitution provides, in part:

> "Section 1. . . . No State shall . . . deprive any person of life, liberty, or property, without due process of law; . . ."

STATEMENT OF THE CASE

After the Circuit Court denied his Motion to Dismiss on Double Jeopardy

Grounds (R. 39-66, 223, 225), Petitioner, Thaddeus A. Pudlo [hereafter, defendant] was found guilty as charged (in Count 6 of Information No. 92 MC1 261249, R. 9), in a bench trial, of violating the Illinois Litter Control Act ["Act"], Ill. Rev. Stat. 1991, ch. 38, § 86-6 (now 415 ILCS 105/6) (set out at App. D, p. App. 26), a Class B misdemeanor, for allowing litter to accumulate on his [business] property in such a manner as to constitute a nuisance, from May 20, 1991, to May 8, 1992. (R. 9)[1] He was

---

[1] Defendant was also charged with 5 counts of reckless conduct (R. 4-8), of which he was found not guilty (R. 251-52); these counts alleged that between May 20, 1991 and May 8, 1992, he recklessly permitted [the same] real property to become or remain a danger to the health or bodily safety of any person. (R. 4-8)

sentenced to 2 years probation, fined $500.00, and ordered to clean the property and yard by a date certain. (R. 69, 252)

While the Information alleged that defendant allowed litter to accumulate upon his property between May 20, 1991 and May 8, 1992, "in such manner as to constitute a public nuisance **or** in such a manner that the litter may be blown or otherwise carried by the natural elements on to the real property of another person," (R. 9) (Emphasis added), no evidence was introduced as to the "may be blown or carried" portion of the statute (R. 213-58), and there was testimony from City Building Inspector Cibres that the accumulation of litter was a public nuisance. (R. 237-38)

Defendant had previously been found guilty of 113 violations of 13 sections of the Chicago Municipal Code ["Code"] relative to his maintenance of the same real [business] property between May 21, 1991, and July 22, 1992, and fined $3,625,050.00. (R. 39-65; Ex. 1 to Motion to Dismiss, R. 66) One of the Code sections that defendant was found to have violated and for which he was fined, § 7-28-450(b), is set out at App. E, p. App. 27. In finding defendant guilty in the municipal prosecution, the court held: "From May 21, 1991 to July 22, 1992, defendant is guilty of violating the following provisions of the Code: *** section 7-28-450(b) in that defendant has **failed to remove garbage, abandoned vehicles, lumber,**

wood, bricks and electrical parts from the subject property ***" (Emphasis added.) (R. 59; see App. 14.) Similarly, in the municipal prosecution, the court found defendant guilty of violating Code § 15-4-970 (Ex. F, App. 28; see p. 19, infra), for **failure to remove rubbish** from premises and yard. (R. 40) The Act defines "litter" as including "rubbish." Act, § 86-3; App. G, App. 29)

In the State trial, City Inspector Cibres testified that the accumulations of junk, debris, tires, lumber and cars that he observed at the subject premises, constitute violations of the municipal code, and that such accumulations are a public nuisance. (R. 235-36) He further testified that he

had testified about his findings, in another proceeding in the same courthouse, before Judge Preston [that is, the Code violation prosecution], and that his present testimony was about the same observations and events as in the prior municipal prosecution. (R. 237-38)

The 13 Code violation convictions were for continuing violations during the period May 21, 1991 to July 22, 1992 (R. 40), which is during the same time-period covered by the instant State charge, May 20, 1991 to May 8, 1992. (R. 9, 226-30, 234-36, 241-44)

The Appellate Court, by majority opinion, affirmed (App. A, pp. App. 1-11), holding that the Circuit Court correctly denied defendant's motion to dismiss on double jeopardy grounds.

Presiding Justice Hoffman dissented. (App. 11-21)

RAISING THE FEDERAL QUESTION BELOW

In the Circuit Court, defendant moved to dismiss on double jeopardy grounds, asserting that the former municipal prosecution for the same conduct constituted a bar to the present State prosecution; the motion was denied. (R. 66, with ex. 1, Final Judgment Order in Municipal prosecution, R. 39-65) Defendant filed a post-trial motion renewing his motion to dismiss on double jeopardy grounds, and seeking reconsideration of the prior order denying same, and reversal of the conviction. (R. 72) This post-trial motion was also denied. (R. 70)

In the Appellate Court of Illinois,

defendant argued that he was unconstitutionally prosecuted and punished by the State after previously being prosecuted and punished for the same conduct by the City, in violation of the constitutional guarantee against double jeopardy. The Point raised on appeal was:

> "The court erred in denying defendant's motion to dismiss. The instant prosecution should have been dismissed on double jeopardy principles." (Def. Br. pp. i, 5)

A majority of the Appellate Court affirmed, rejecting defendant's argument, ruling that the Circuit Court's order denying the motion to dismiss was correct. (App. A, pp. App. 1-11)

On Petition for Rehearing in the Appellate Court, defendant again raised

the double jeopardy argument (Pet. for Rhrg., pp. 1-3), which was again rejected. (App. B, pp. App. 22-23)

In the Supreme Court of Illinois, defendant argued in his Petition for Leave to Appeal ["PLA"], No. 79622, that the Supreme Court should review the Appellate Court's Opinion affirming the Circuit Court's judgment, which erroneously determined that double jeopardy did not apply. The "Point Relied On For Reversal of Judgment of Appellate Court" asserts:

> "The instant prosecution, for violation of the Litter Control Act (Ill.Rev.Stat., ch. 38, par. 86-6; now 415 ILCS 105/6), should have been held barred on double jeopardy principles. Defendant's prior prosecution and conviction for various violations of the Municipal Code of Chicago, was for the same conduct; thus defendant was subjected to multiple punishments for the same offense, in violation

> of the U.S. and Illinois constitutional prohibitions against double jeopardy." (PLA, p. 2)

The Supreme Court denied leave to appeal. (App. C, pp. App. 24-25)

REASONS FOR GRANTING CERTIORARI

Certiorari should be allowed to safeguard that aspect of the constitutional guarantee against double jeopardy, which precludes multiple punishment for the same conduct.

1. Considering that the Court has granted certiorari to determine whether forfeiture and criminal prosecution predicated on the same conduct is prohibited by the double jeopardy clause (*cert. granted* Jan. 12, 1996 in *United States v. Ursery*, No. 95-345; *United States v. $405,089.23*, No. 95-346; and *Degen v. United States*, No. 95-173), granting certiorari in the present case will afford this Court an opportunity to address yet another form of official abuse of prosecutorial power to doubly penalize the same conduct.

A. The constitutional guarantee against double jeopardy prohibits the prosecution and punishment of a citizen by the State under a Litter

Control Statute, for the same conduct for which he was convicted and fined for violations of the Chicago Municipal Code - where a City Building Inspector testified at the State trial, that the property conditions about which he testified in the State prosecution, were the same as those to which he testified at the municipal prosecution.

B. The State Appellate Court majority irrationally misapplies this Court's precedents - the "same elements" standard, as formulated in Blockburger v. United States, 284 U.S. 299, 76 L.Ed. 306, as reaffirmed and refined in Grady v. Corbin, 495 U.S. 508, 109 L.Ed.2d 548, and United States v. Dixon, 509 U.S. , 125 L.Ed.2d 556, to include "same conduct" - in determining that "allowing litter to accumulate" is not the same as "failing to remove" litter for purposes of the "same elements" test.

The opinion of the majority of the Appellate Court (App. A, pp. App. 1-11), strains ordinary logic and reasoning, and is contrary to all settled double jeopardy precedent. The strong

dissenting Opinion of Presiding Justice Hoffman (App. A, pp. App. 11-21), tracks the applicable and correct legal principles, and highlights the irrationality of the majority's Opinion.

In the Appellate Court, defendant specified 13 of the 113 enumerated Code violation convictions, that clearly triggered double jeopardy protection.[2]

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[2] We concentrate on one Code violation, which so clearly amounts to the same elements and conduct as the State Litter Control Act, that detailed reference to and/or reliance on the other Code sections is not essential. While defendant persists in his position that ALL the Code violations for which he was prosecuted and punished by the City, are for the same conduct as that for which he was prosecuted and punished herein by the State - see, e.g., Code § 15-4-970; App. F, App. 28; see p. 19, infra - the identity of elements of § 86-6 of the Act and Code § 7-28-450(b), and of conduct for which defendant was convicted under both the Act and this Code section, amply demonstrate the double jeopardy violation.

The majority compared the elements of the Litter Control Act (Ill.Rev. Stat., ch. 38, § 86-6; now 415 ILCS 105/6), with the elements of the 13 Code sections for which defendant was convicted and punished, for purposes of applying the test set forth in Blockburger v. United States, 285 U.S. 299, 76 L.Ed. 306 (1932), which governs what constitutes the "same offense" for double jeopardy purposes. (App. 6-9) Per Blockburger, "the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of an additional fact which the other does not." 76 L.Ed. at 309. As this Court more recently held:

> "The same-elements test, sometimes referred to as the

> 'Blockburger' test, inquires whether each offense contains an element not contained in the other; if not, they are the 'same offence' and double jeopardy bars additional punishment and successive prosecution." United States v. Dixon, 509 U.S. ___, 125 L.Ed.2d 556, 568 (1993).
>
> "[In] addition to passing the Blockburger test, a subsequent prosecution must satisfy a 'same-conduct' test to avoid the double jeopardy bar. The Grady test provides that, 'if, to establish an essential element of an offense charged in that prosecution, the government will prove conduct that constitutes an offense for which the defendant has already been prosecuted,' a second prosecution may not be had." Dixon, supra, 125 L.Ed.2d at 568, quoting from Grady v. Corbin, 495 U.S. 508, 510, 109 L.Ed.2d 548 (1990).

In the instant cause, the Appellate Court majority ignored the "same-conduct" test required by this Court per Dixon and Grady. At bar, the "conduct" involved in both cases in which

defendant was prosecuted, was exactly the same. Indeed, at the trial of this cause, the City Inspector admitted that he was a witness in both of the prosecutions, and that his testimony was the same in both proceedings, and was about the same observations and events. (R. 237-38) For this reason alone, this Honorable Court should allow certiorari to review the decision below.

In addition to ignoring the "same-conduct" test, the majority's analysis under the "same-elements" test is incredibly ridiculous, as exposed by Presiding Justice Hoffman in his well-reasoned dissent. (App. 11-21)

The majority concluded that a number of Code sections, including § 7-28-450(b), "contain elements not

required in section 86-6 of the Litter Control Act" (App. 9) - in that the Code sections require an "owner to remove refuse, as opposed to the Litter Control Act's prohibition against allowing litter to accumulate in the first place." (App. 9)

Presiding Justice Hoffman, in dissent, summed up the dichotomy:

> "I find the distinction to be without a difference. One allows litter to accumulate by failing to remove it." (App. 19)

One allows litter to "accumulate" by not removing it. "Accumulate" means "to gather or pile up especially little by little." WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY, p. 50.

There are no different elements under the Code § 7-28-450(b) (App. 26) and § 86-6 of the Litter Control Act

(App. 27).

Similarly, Code § 15-4-970 (App. 28), for which defendant was also convicted, provides *(inter alia)*:

> **"15-4-970 Rubbish.**
> Rubbish shall not be allowed to accumulate in any part of any building, nor outside of and adjacent to any buildings . . ."

Under this Code section, rubbish shall not be allowed to accumulate. Under § 86-6 of the Act, no person shall allow litter to accumulate. How are these two provisions different at all?[3] The definition of "litter" under the Litter Control Act, includes "rubbish." Ill.Rev.Stat., ch. 38, § 86-3. (App. E,

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[3] This section is set out in full at App. F, App. 28. When one considers the statute in full, it is clear that the majority's claim that Code § 15-4-970 is limited to fire hazard accumulations only (App. 8), is wrong.

App. 29)[4]

This case presents an ideal opportunity to educate the bench and bar, and especially, the prosecution, as to the true scope of the constitutional prohibition against double jeopardy and successive punishment for the same conduct. The present decision represents a bad example of actual practice "in the trenches," and shows how reviewing courts are eroding the guarantee by refusing to follow this Court's decisions in Grady v. Corbin, and United States v. Dixon, supra.

As Presiding Justice Hoffman

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[4] Fully set out, App. 29. Litter may include:

> "any garbage, trash, refuse, debris, rubbish, ..." Ill. Rev. Stat. 1989, ch. 38, § 86-3. (Emphases added.)

concluded in dissent:

> "[T]he defendant was subjected to successive prosecutions for the same conduct under an ordinance and a statute, neither of which required proof of any additional fact which the other did not, in violation of the prohibition against double jeopardy . . . ." (App. 21)

There is no question but that the sanctions imposed against defendant in the City case are punitive civil sanctions. (See App. 14-15.) In such a situation - and even the majority did not dispute - if the "same elements" test is met, the Double Jeopardy Clause protects against successive State-City or City-State prosecution, no matter which comes first. This Court's holding in United States v. Halper, 490 U.S. 435, 104 L.E.2d 487, 502 (1989), that a defendant already punished in a criminal

prosecution may not be subjected to an additional punitive civil sanction, has been held to apply to the converse time scenario, as at bar, where criminal prosecution comes after imposition of punitive civil sanctions for the same conduct. United States v. Furlett, 974 F.2d 839, 843 (7 Cir. 1992).

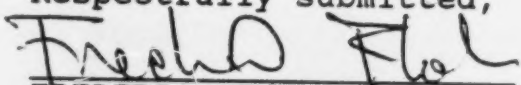
Considering that this Court has granted certiorari to determine whether forfeiture and criminal prosecution predicated on the same conduct is prohibited by the double jeopardy clause (*cert. granted* Jan. 12, 1996 in *United States v. Ursery*, No. 95-345; *United States v. $405,089.23*, No. 95-346; and *Degen v. United States*, No. 95-173), certiorari should be granted in this case to afford this Court an ideal

opportunity to address yet another form of official abuse of prosecutorial power to twice penalize the same conduct - here, punishment both under a State statute and a City ordinance - for the same conduct.

CONCLUSION

For the foregoing reasons, certiorari should be allowed; and, on the merits, defendant's conviction and sentence should be reversed, because his prosecution and punishment in this case is barred by the federal constitutional guarantee against double jeopardy (successive punishment for the same conduct).

Respectfully submitted,



FREDERICK F. COHN
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APPENDICES

APPENDIX A

FOURTH DIVISION
June 1, 1995

NOTICE

The text of this opinion may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

No. 1-93-1891

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from Circuit Court of Cook County
Plaintiff-Appellee,	)	
v.	)	
THADDEUS A. PUDLO,	)	Honorable Morton Zwick,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE SHEILA O'BRIEN delivered the opinion of the court:

On May 15, 1992, the State filed a criminal information charging defendant, Thaddeus Pudlo, with violating section 86-6 of the Litter Control Act by allowing "litter to accumulate upon [his

property at 1651-1653 West Hubbard] in such a manner as to constitute a public nuisance or in such a manner that the litter may be blown or otherwise carried by the natural elements on to the real property of another person." The State contended defendant allowed the litter to accumulate from May 20, 1991, to May 8, 1992. Following a bench trial, defendant was found guilty and sentenced to two years' probation and fined $500. On appeal, defendant argues the trial court erred when it denied his motion to dismiss the information on double jeopardy grounds. We affirm.

In his motion to dismiss filed April 26, 1993, defendant argued that on November 17, 1992, the trial court found he had committed 113 violations of the

Chicago Municipal Code by allowing various forms of rubbish and debris to accumulate on his property at 1649-1653 West Hubbard. The violations occurred between May 21, 1991, and July 22, 1992, and the trial court *[p. 2]* imposed a fine of $3,625.050. Defendant contended the trial court should dismiss the criminal information on double jeopardy grounds because his violations of the Municipal Code constituted the same conduct which formed the basis of the criminal charge. The trial court denied defendant's motion and later convicted him of violating the Litter Control Act.

On appeal, defendant contends the trial court erred by denying his motion to dismiss the criminal information based on double jeopardy. The double

jeopardy clause of the fifth amendment to the United States Constitution provides no person shall "be subject for the same offence to be twice put in jeopardy of life or limb." (U.S. Const., amend. V.) The Illinois Constitution of 1970 provides "[n]o person shall * * * be twice put in jeopardy for the same offense." (Ill. Const. 1970, art. I, §10.) The double jeopardy clause protects against three distinct abuses: (1) a second prosecution for the same offense after acquittal; (2) a second prosecution for the same offense after conviction; and (3) multiple punishments for the same offense. People v. Levin (1993), 157 Ill. 2d 138, 623 N.E.2d 317.

The third of these protections is the subject of this appeal Defendant

argues his violation of section 86-6 of the Litter Control Act from May 21, 1991, to May 8, 1992, involves the same conduct as 13 of his Municipal Code violations and his two-year probation term and $500 fine for violating section 86-6 of the Litter Control Act constitute multiple punishments for the same offense and, thus, violate the constitutional prohibition against double jeopardy.

The State argues the fine imposed by the trial court under the Municipal Code is a civil penalty which does not constitute "punishment" for double jeopardy analysis. We need not *[p. 3]* address that issue since, for the reasons that follow, we hold none of defendant's 13 Municipal Code violations

constitute the same offense as his violation of the Litter Control Act.

In United States v. Dixon (1993), 509 U.S. , 113 S.Ct. 2849, 125 L.Ed.2d 556 the Supreme Court reaffirmed that the test set forth in Blockburger v. United States (1932), 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed.2d *[sic.]* 306, governs what constitutes the same offense for double jeopardy purposes. Under Blockburger, two offenses are the same if they have identical statutory elements or if one offense is a lesser included offense of the other. (Blockburger, 284 U.S. at 304, 52 S.Ct. at 182, 76 L.Ed. at 309.) Two offenses are different if each requires proof of an element the other does not have. Blockburger, 284 U.S. at 304, 52

S.Ct. at 182, 76 L.Ed. at 309.

Therefore, we begin our analysis by comparing the elements of section 86-6 of the Litter Control Act with the elements of the 13 Municipal Code sections defendant violated. Section 86-6 provides:

> "No person shall allow litter to accumulate upon real property, which the person charged is the owner or tenant in control, in such a manner as to constitute a public nuisance or in such a manner that the litter may be blown or otherwise carried by the natural elements on to the real property of another person." Ill. Rev. Stat.

1991, ch. 38, par. 86-6 (now 415 ILCS 105/6 (West 1992).)

Twelve of the Municipal Code sections defendant violated contain elements not required in section 86-6 of the Litter Control Act. See sections 15-4-970 and 13-196-580(d)(prohibiting forms of trash which constitute a fire hazard); 7-28-060 and 5-4-090 (prohibiting buildings infected with disease); 13-196-620(a)(requiring family units be in a "safe" condition); 13-196-*[p. 4]* 630(b)(requiring owners to maintain and repair their equipment); 5-4-080 (requiring floor beneath any water closet be kept in good repair); 7-28-720 (prohibiting forms of trash unless placed on open racks at least 18 inches above the ground); 7-28-040 (prohibiting

abandonment of refrigerators and iceboxes with attachable doors in any place accessible to children); 7-28-240 and 7-28-450(a) and 7-28-450(b) (requiring owner to remove refuse, as opposed to the Litter Control Act's prohibition against allowing litter to accumulate in the first place). Also, unlike section 86-6 of the Litter Control Act, none of those 12 Municipal Code sections specifically prohibits litter which can be blown on to the real property of another person. Since each of the 12 Municipal Code sections contain elements not required in section 86-6 of the Litter Control Act, and vice versa, they are not the same offense for double jeopardy purposes.

Defendant failed to provide us the

text of the 13th municipal ordinance he violated, section 4-344-610. In its absence, we presume section 4-344-610 is not the same offense for double jeopardy purposes as section 86-6 of the Litter Control Act. See Glater v. Fabianich (1993), 252 Ill. App. 3d 372, 377, 625 N.E.2d 96 (it is the appellant's duty to provide a complete record containing all matters relevant to the issues he raises on appeal, and any doubt arising from an incomplete record is resolved against him).

Pursuant to People v. Nicholls (1978), 71 Ill. 2d 166, 374 N.E.2d 194, and People v. Agnew (1985), 105 Ill. 2d 275, 473 N.E.2d 1319, we grant the State's request for $150 in costs for defending this appeal and incorporate it

as part of our judgment.

Affirmed.

CAHILL, J. concurs.

HOFFMAN, P.J. dissents.

[p. 5]

PRESIDING JUSTICE HOFFMAN, dissenting:

The majority correctly states the standard to be employed in determining whether a second prosecution violates the prohibitions against double jeopardy contained in the Constitution of the United States (U.S. Const. amend. V), and the Constitution of the State of Illinois (Ill. Const. 1970, art. I, §10). But I believe the majority has misapplied that standard under the facts of this case.

Although the prosecution of a municipal ordinance violation is

considered civil in nature, successive State and municipal prosecutions for the same conduct can constitute double jeopardy (People v. Allison (1970), 46 Ill. 2d 147, 263 N.E.2d 80), when the potential penalty for the ordinance violation is punitive in nature (see United States v. Halper (1989), 490 U.S. 435, 104 L. Ed. 2d 487, 109 S.Ct. 1892). In this case, the defendant was prosecuted and found guilty of 113 violations of the Municipal Code of Chicago (Code). His fines totaled $3,625,050. After he was convicted of violating the Code, the defendant was found guilty and sentenced for violating section 86-6 of the Litter Control Act (Act)(Ill. Rev. Stat. 1989, ch. 38, par. 86-6).

One of the sections of the Code that the defendant was found to have violated and for which he was fined was section 7-28-450(b) which provides:

"The owner, occupant, agent or person in possession or control of any residence or business ("owner") shall remove or cause to be removed any garbage, debris, refuse, litter and miscellaneous waste located upon his property or place of business. Unremoved material of such nature is hereby declared to be a public nuisance. Any owner or other person found in violation of this section shall be fined not less than $200.00 and not more than $1,000.00 for each offense. *[p. 6]* Each day on which such an offense shall continue shall constitute a separate and

distinctoffense *[sic.]*" (Chicago Municipal Code §7-28-450(b)(1990).) In finding the defendant guilty, the court held: "From May 21, 1991 to July 22, 1992, defendant is guilty of violating the following provisions of the Code: *** section 7-28-450(b) in that defendant has failed to remove garbage, abandoned vehicles, lumber, wood, bricks and electrical parts from the subject property ***"

Nothing in this record suggests that the potential fines provided in section 7-28-450(b) are remedial in nature or intended to defray the city's costs of enforcement. To the contrary, the Code provides, in addition to the penalties that may be assessed, whenever any work such as "cleaning up" is done

at city expense, the city's buildings commissioner shall issue a warrant for collection from the owner of the property. (Chicago Municipal Code §13-8-120 (1989).) From an examination of the record and the applicable ordinances, I conclude that the penalties provided for a violation of section 7-28-450(b) are punitive in nature.

Guided by the standard articulated in Blockburger v. United States (1932), 284 U.S. 299, 76 L. Ed. 2d *[sic.]* 306, 52 S. Ct. 180, the next step is to determine if a violation of section 7-28-450(b) of the Code has the same elements as a violation of section 86-6 of the Act, or if one offense is the lesser included offense of the other.

The majority concludes that the defendant's prosecution for a violation of section 86-6 was not an impermissible successive prosecution for the same offense for which he was fined for violating section 7-28-450(b). This conclusion rests on a finding that a violation of either section requires proof of an element not required for a violation of the other. I disagree. *[p. 7]* The owner of real property violates section 86-6 of the Act by allowing litter to accumulate upon the property in such a manner as to constitute a public nuisance or by allowing litter to accumulate in such a manner that it may be blown or otherwise carried onto the real property of another by natural elements. (Ill. Rev. Stat. 1989, ch.

38, par. 86-6.) The Act does not define the term "public nuisance," but it does define the term "litter." Litter may include:

> "any garbage, trash, refuse, debris, rubbish, grass clippings or other lawn or garden waste, newspaper, magazines, glass, metal, plastic or paper containers or other packaging construction material, abandoned vehicle ***, motor vehicle parts, furniture, oil, carcass of a dead animal, any nauseous or offensive matter of any kind, any object likely to injure any person or create a traffic hazard, or anything else of an

unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly." Ill. Rev. Stat. 1989, ch. 38, par. 86-6.

Section 7-28-450(b) declares that a violation of its provisions is a public nuisance, and the defendant was found guilty of a violation of that section for having failed to remove garbage and abandoned vehicles from the property at 1651-53 West Hubbard Street. Section 86-6 prohibits an accumulation of litter, which includes debris and abandoned vehicles, in such a manner as to constitute a public nuisance. The defendant was found guilty of a violation of section 86-6 in part upon

the testimony of a Chicago building inspector that he maintained junk cars and debris on the property and that the accumulation was a "nuisance to the public."

The majority draws a distinction between the enactments because section 7-28-450(b) is violated by one who fails to remove litter from the property, whereas section 86-6 proscribes its accumulation. I find the distinction to be without a difference. One allows litter to accumulate *[p. 8]* by failing to remove it. The majority finds a further distinction based on the language of section 86-6 which prohibits the accumulation of litter that may be blown or otherwise carried by natural elements onto the real property of

another. However, there was no testimony in this record relating to litter blowing onto the property of another. Because the statute is stated in the disjunctive, merely allowing litter to accumulate in such a manner as to constitute a public nuisance is sufficient to constitute a violation.

In sum, I disagree with the majority in its finding that the elements necessary for a violation of section 7-28-450(b) are different from those necessary to constitute a violation of section 86-6. If a violation of section 7-28-450(b) is established against the owner of property, nothing more need be proven to establish a violation of section 86-6. Further, the State's own witness in the

instant action testified that the property conditions that he testified to were the same as those he testified to in the proceeding in which the defendant was fined for violating section 7-28-450(b).

Based upon the foregoing analysis, I find that the defendant was subjected to successive prosecutions for the same conduct under an ordinance and statute, neither of which required proof of any additional fact which the other did not, in violation of the prohibition against double jeopardy in the United States and State Constitutions. Therefore, I respectfully dissent.

APPENDIX B

No. 1-93-1891

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	**Appeal from the Circuit Court of Cook County**
Plaintiff-Appellee-Respondent,	)	*[JULY 19, 1995]*
v.	)	
THADDEUS A. PUDLO,	)	
Defendant-Appellant-Petitioner.	)	**Honorable Morton Zwick, Judge Presiding.**

O R D E R

This cause coming on to be heard on the Petition for Rehearing of Defendant-Appellant-Petitioner, **THADDEUS PUDLO**, the Court being fully advised in the premises;

IT IS HEREBY ORDERED that Defendant's Petition for Rehearing be ~~**GRANTED**~~**/DENIED.**

DATED: **July 19, 1995**

{signed} *Sheila O'Brien*
JUSTICE

P.J. Hoffman
JUSTICE

J. Cahill
JUSTICE

APPENDIX C

STATE OF ILLINOIS
SUPREME COURT

At a term of the Supreme Court, begun and held in Springfield, on Monday, the thirteenth day of November, 1995.

Present: Michael A. Bilandic,
Chief Justice
Justice Benjamin K. Miller
Justice Charles E. Freeman
Justice Mary Ann G. McMorrow
Justice James D. Heiple
Justice Moses W. Harrison II
Justice John L. Nickels

On the sixth day of December, 1995, the Supreme Court entered the following judgment:

[DECEMBER 6, 1995]

No. 79622

People State of Illinois,

Respondent	Petition for leave to Appeal from
v.	Appellate Court First District
Thaddeus A. Pudlo,	1-93-1891 92MC1261249
Petitioner	

The Court having considered the Petition for Leave to Appeal and being fully advised of the premises, the Petition for Leave to Appeal is DENIED.

As Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, I certify that the foregoing is a true copy of the final order in this case.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said Court, this twenty-eighth day of December, 1995.

{Signed} Juleann Hornyak

Clerk,
Supreme Court of the State of Illinois

APPENDIX D

Ill. Rev. Stat. 1991, ch. 38, § 86-6 (now 415 ILCS 105/6), provides:

> **"§ 86-6. Accumulation of Litter Prohibited**
>
> No person shall allow litter to accumulate upon real property, of which the person charged is the owner or tenant in control, in such a manner as to constitute a public nuisance or in such a manner that the litter may be blown or otherwise carried by the natural elements on to the real property of another person."

APPENDIX E

Municipal Code of Chicago, §7-28-450(b) (1990), provides:

> "The owner, occupant, agent or person in possession or control of any residence or business ("owner") shall remove or cause to be removed any garbage, debris, refuse, litter and miscellaneous waste located upon his property or place of business. Unremoved material of such nature is hereby declared to be a public nuisance. Any owner or other person found in violation of this section shall be fined not less than $200.00 and not more than $1,000.00 for each offense. Each day on which such an offense shall continue shall constitute a separate and distinct offense."

APPENDIX F

"15-4-970 Rubbish.

Rubbish shall not be allowed to accumulate in any part of any building, nor outside of and adjacent to any buildings, and special care shall be paid to elevator an air shafts, under benches, in cl ets, in dark and out-of-the-way places around electric machinery, steam pipes and in premises and buildings in which oils are stored or used. All weeds, grass or other growth, when same constitutes a fire hazard, shall be cut down and removed by the owner or occupant of the property."

APPENDIX G

Ill. Rev. Stat. 1989, ch. 38, § 86-3, provides in pertinent part, that "litter" is defined as including:

> "**any garbage, trash, refuse, debris, rubbish**, grass clippings or other lawn or garden waste, newspaper, magazines, glass, metal, plastic or paper containers or other packaging construction material, abandoned vehicle ***, motor vehicle parts, furniture, oil, carcass of a dead animal, any nauseous or offensive matter of any kind, any object likely to injure any person or create a traffic hazard, or anything else of anunsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly." (Emphases added.)